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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WILLIAM A. WEST,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)
_____)

PCHB No. 79-92

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$50 civil penalty for outdoor burning allegedly in violation of respondent's Section 4.01 of Regulation I having come on regularly for formal hearing on the 11th day of October, 1979 in Longview, Washington, and appellant, William A. West appeared representing himself, and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladlev with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, records and files herein and having

1 reviewed the Proposed Order of the presiding officer mailed to the
2 parties on the 24th day of October, 1979, and more than twenty days
3 having elapsed from said service; and

4 The Board having received no exceptions to said Proposed Order and
5 the Board being fully advised in the premises; NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Order containing Findings of Fact, Conclusions of Law and Order dated
8 the 19th day of October, 1979, and incorporated by reference herein
9 and attached hereto as Exhibit A, are adopted and hereby entered as
10 the Board's Final Findings of Fact, Conclusions of Law and Order
11 herein.

12 DATED this 21st day of November, 1979.

13 POLLUTION CONTROL HEARINGS BOARD

14 *Nat W. Washington*
15 NAT W. WASHINGTON, Chairman

16 *Chris Smith*
17 CHRIS SMITH, Member

18 *David Akana*
19 DAVID AKANA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER 2

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1 Witnesses were sworn and testified. Exhibits were examined.
2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these:

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this
7 Board a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, of which official notice is taken.

9 II

10 On the morning of June 4, 1979, appellant William A. West visited
11 respondent's office to lodge a complaint, as he had done for several
12 years, concerning airborne dust from dirt roads near his home in LaCenter.
13 Respondent's Chief of Control discussed the situation with appellant.
14 Unsatisfied, appellant insisted that respondent's inspectors visit his
15 home immediately and vowed to ignite tires in his back yard at 3:30
16 that afternoon to force the inspectors to come. Respondent's Chief of
17 Control advised appellant not to do that but expressed concern for
18 appellant's complaints.

19 III

20 In the afternoon of June 4, 1979, appellant ignited a fire, but
21 one consisting solely of sawn, untreated lumber confined to a burn
22 barrel. Although the fire was used to roast hot dogs, the appellant
23 ignited the fire to attract respondent's investigators and would not
24 have ignited it otherwise. At the request of respondent's Chief of

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

Control investigators arrived at appellant's home at the appointed time, were invited in, inspected the fire and issued a notice of Violation citing respondent's Section 4.01 of Regulation I. Appellant was cooperative and extinguished the fire when requested to do so by the investigator. He had no permit for the fire. A Notice and Order of Civil Penalty was later received by appellant assessing a \$50 civil penalty. From this, appellant appeals.

IV

Appellant has no prior record of any violation of respondent's regulations. He has urged officials of the Town of LaCenter to take action to pave the streets in question.

V

Arr Conclusion of Law hereinafter stated which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Respondent's Section 4.01 of Regulation I provides, in pertinent part:

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow or maintain any open fire within the jurisdiction of the Authority, except as provided in this Regulation.

(a) The following fires are excepted from provisions of this regulation:

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 (1) Fires set only for recreational purposes
2 and cooking of food for human consumption,
provided no nuisance is created.

3 (2) ...

4 (b) Open burning may be done under permit:

5 (1) Application for burning permits shall be
6 on forms provided by the local fire department.

7 (2) ...

8 (Emphasis added.)

9 In order to fit within the "recreation" exception of Section
10 4.01(a)(1) above, the fire must only be for a bona fide recreational
11 purpose and not, as here, for the additional purpose of summoning
12 respondent's inspectors. Appellant is therefore not within the
13 protection afforded by the recreational exception and, having no permit,
14 violated respondent's Section 4.01 of Regulation I.

15 II

16 Because the violation committed by appellant is his first
17 offense against respondent's Regulation I, and because his concern was
18 for air pollution control, though his methods were eccentric, the
19 penalty in this matter should be suspended. The effect of this incident
20 should be to improve each party's understanding of the other, and to
21 result in open, straightforward communication in the future, without
22 resort to any more fires such as this one.

23 III

24 Any Finding of Fact which should be deemed a Conclusion of Law

25
26 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
27 AND ORDER

1 is hereby adopted as such.

2 Therefore, the Pollution Control Hearings Board issues this

3 ORDER

4 The \$50 civil penalty is affirmed; provided however, that it is
5 suspended on condition that appellant not violate respondent's
6 outdoor fire regulations for a period of six months from the date of
7 appellant's receipt of this Order.

8 DONE at Lacey, Washington this 19th day of October, 1979.

9 POLLUTION CONTROL HEARINGS BOARD

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11 WILLIAM A. HARRISON
12 Presiding Officer
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26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
28 AND ORDER